

STATE OF NEW YORK
STATE TAX COMMISSION

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In the Matter of Petition
:
of
:
J. M. SMITH MFG. CORP.
:
for redetermination of defici-
encies in franchise tax under
Article 9-A of the tax law for
calendar years 1967 and 1968.
:
- - - - -

J. M. Smith Mfg. Corp. having filed petition for redetermination of deficiencies of franchise tax under Article 9-A of the tax law for 1967 and 1968, and a hearing having been held in connection therewith on June 10, 1971 at the office of the State Tax Commission, 80 Centre Street, New York City, before John J. Genevich, Hearing Officer of the Department of Taxation and Finance, at which hearing Benjamin Levitz, Certified Public Accountant, appeared personally and testified on behalf of the taxpayer, and the record having been duly examined and considered by the State Tax Commission,

It is hereby found:

(1) J. M. Smith Mfg. Corp. was incorporated under the laws of New York State on November 16, 1959.

(2) Federal reports for 1967 and 1968 were filed on form 1120-S pursuant to an election made under Subchapter S, Chapter 1 of the Internal Revenue Code. Item 28 of such federal reports discloses taxable income of \$104,715.35 for 1967 and \$156,456.89 for 1968.

(3) The corporation computed its New York State franchise taxes for 1967 and 1968 using the alternative basis provided for in Section 210.1(a)(3) of the tax law as follows:

<u>1967</u>	
Federal taxable income (Item 28 of federal report)	\$104,715.35
Plus officers' compensation deducted in computing federal taxable income	32,800.00

Total	137,515.35
Less exemption	15,000.00
Alternative base	122,515.35
30% of alternative base	36,754.60
Tax at 5½%	\$ 2,021.50

1968

Federal taxable income (Item 28 of federal report)	\$156,456.89
Plus officers' compensation deducted in computing federal taxable income	29,640.00
Plus franchise tax	3,616.15
Total	189,713.04
Less exemption	15,000.00
Alternative base	174,713.04
30% of alternative base	52,413.91
Tax at 7%	\$ 3,668.97

(4) On November 16, 1970, the Corporation Tax

Bureau issued notices of deficiency as follows:

1967

Federal taxable income (Item 28 of federal report)	\$104,715.35
Tax at 5½%	5,759.34
Tax reported	2,021.50
Deficiency	\$ 3,737.84

1968

Federal taxable income (Item 28 of federal report)	\$156,456.89
Plus franchise tax deducted in computing federal taxable income	11,223.68
Entire net income	167,680.57
Tax at 7%	11,737.64
Tax reported	3,668.97
Deficiency	\$ 8,068.67

(5) The taxpayer timely filed petitions for redetermination of such deficiencies.

(6) Section 208.9 of the tax law states, in part:

"The term 'entire net income' means total net income from all sources, which shall be presumably the same as the entire taxable income which the taxpayer is required to report to the United States treasury department, or which the taxpayer would have been required to report, if it had not made an election under subchapter s of chapter one of the internal revenue code, except as hereinafter provided, and subject to any modification required by paragraphs (d) and (e) of subdivision three of section two hundred ten of this article."

The State Tax Commission hereby

DECIDES:

(A) Pursuant to Section 208.9 of the tax law, a corporation which elects to file under Subchapter S for federal purposes is treated in the same manner as a corporation which has not made such election.

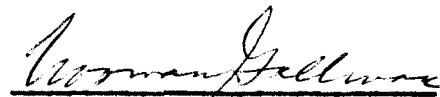
(B) Taxable income reported at Item 28 of the federal returns on form 1120-S for 1967 and 1968, similarly as Item 28 of regular corporation reports on federal form 1120 for the same years, is the starting point in determining entire net income.

(C) The tax based on entire net income is applicable and the notices of deficiency issued on November 16, 1970 for 1967 and 1968 are affirmed as correct, together with interest due in accordance with Section 1084 of the tax law.

Dated: Albany, New York

this 22nd day of October 1971.

STATE TAX COMMISSION


President


Commissioner


Commissioner